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September 11, 2024

VIA ECF

The Honorable Gregory H. Woods
United States District Judge
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 2260
New York, NY 10007

Re: *City of New York v. EnviroMD Group LLC et al* [1: 24-cv-05161]
Request for Pre-Motion Conference on Motion to Dismiss Plaintiff's
Second Amended Complaint

Dear Judge Woods,

Pursuant to Your Honor's Individual Rules and this Court's August 10, 2024 Order [ECF 55], Defendants EnviroMD Group LLC, KLCC Wholesale Inc., RZ Smoke Inc., Urban Smoke Distributors, and GT Imports (collectively the "Moving Defendants") respectfully request a pre-motion conference regarding the Moving Defendants' filing a Motion to Dismiss Plaintiff's Second Amended Complaint ("SAC") filed on August 21, 2024. [ECF 61].

The Moving Defendants anticipate filing a Motion to Dismiss Plaintiff's SAC on the following grounds. First, Plaintiff still does not have standing to enforce the PACT Act because the City does not impose a tax on e-cigarettes. The SAC also fails to state a claim for violating the PACT Act that is supported by allegations of "delivery sales" as defined therein, since "delivery sales" must be made to "consumers," and any receiving parties of e-cigarettes identified in the SAC do not meet the PACT Act's definition of "consumers."

Additionally, Plaintiff's claim for violation of New York Public Health Law § 1399-ll fails because this law does not prohibit sales between distributors and wholesalers of e-cigarettes. Further, Plaintiff's claim for violation of restrictions imposed by New York City Administrative Code § 17-715 fails because these restrictions are applicable only to businesses engaged in retail sale of electronic cigarettes to individual consumers. Finally, Plaintiff's public nuisance claim is not sufficiently supported by public policy, seeks to impose liability for legal conduct, and is duplicative of its other claims.

For at least these reasons, the Motion will seek dismissal of each claim of the SAC. Moreover, the Motion will seek dismissal on the grounds that Plaintiff has failed to articulate facts sufficient to state any of its claims against each of the Moving Defendants, since the SAC includes deficient assertions of sales to intra-state businesses rather than particularized examples of any alleged violative conduct.

We respectfully request that this Court schedule a pre-motion conference to discuss the Moving Defendants' motion to dismiss the SAC.



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Respectfully Submitted,

/s/ Meredith Lloyd

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Distributors, and GT Imports*

CC: Counsel of Record